

Civil Writ Petition No.5416/03
Oriental Ins. Co.Ltd Vs. Addl.Civ.Judge No.1 Ajmer & Ors

Date of Order ::: 05/12/05

Hon'ble Mr. Justice Ajay Rastogi

Mr. Rajendra Salecha, for petitioner,

Instant petition has been filed questioning order dt.09/05/03 (Ann.7) passed by Addl.Civil Judge (Jr.Dn.) No.1, Ajmer. As per pleadings of this petition, respondent No.2 (plaintiff) filed a suit initially pre-empting adverse order which petitioner meant to pass in disciplinary proceedings pending against him but no injunction was passed by the trial Court, therefore, he considered proper to participate in disciplinary proceedings, which culminated into infliction of penalty of removal from service, against which he preferred appeal. After passing order of punishment of removal from service, plaintiff employee moved application seeking amendment in his plaint, which was allowed by trial Court.

The petitioner thereafter filed application U/s 151, CPC that in view of change in circumstances on record, the suit has become infructuous which has been rejected by the Trial Judge. In my opinion, once amendment application was allowed by trial Judge and all subsequent facts have been brought on record, the suit in my opinion cannot be considered to have become infructuous. I do not find any error in the impugned order of the trial Court (Ann.7).

Consequently, writ petition fails and is hereby dismissed, alongwith stay petition No.4430/03.

(Ajay Rastogi), J.

K.Khatri/5416cwp2003.

Civil Writ Petition No.9634/05
Babulal Koli Vs. State & Ors

Date of Order :: 06/12/05

Hon'ble Mr. Justice Ajay Rastogi

Mr. B.C.Chirania, for petitioner,

Instant petition has been filed challenging order of transfer. It is a service matter as defined under the Rajasthan Civil Service Appellate Tribunal Act, which provides a remedy of appeal. In view of an alternative remedy available under the Act, I am not inclined to exercise extraordinary power of this Court under Art.226 of the Constitution of India.

Consequently, this writ petition fails and is hereby dismissed alongwith stay petition No.8316/05.

(Ajay Rastogi) , J.

K.Khatri/5416cwp2003.

Civil Writ Petition No.4996/05
Durga Shanker Maneria Vs. Director Secondary Education

Date of Order ::: 05/12/05

Hon'ble Mr. Justice Ajay Rastogi

Mr. D.P.Sharma, for petitioner,

Instant petition has been filed questioning order dt.18/10/04 (Ann.3) passed by Civil Services Appellate Tribunal. Instant matter pertains to the transfer of petitioner while working as Sr. Physical Instructor, from Govt.Sr.Sec.School, Rundeda to Kotra (Udaipur). This transfer order was challenged before the Tribunal on the premises that order was passed in order to accommodate respondent No.4 who was earlier posted at Rundeda. The Tribunal, after considering material on record, recorded finding that petitioner was not able to show any malice and the transfer order has been passed in interest of administrative exigency.

Counsel submits that respondent No.4 who was earlier posted at Kotra, was shifted vide order dt.28/09/04 (Ann.2) and only in a span of two years, respondent No.4 has been brought back to Kotra and petitioner has been transferred vide impugned order (Ann.2) to Kotra, which is at a distance of 175 kms, which clearly shows that impugned transfer order was passed to accommodate respondent No.4 and which cannot be said to be in administrative interest and this fact has not been considered while deciding his appeal by the Tribunal.

The petitioner himself admits his posting

in Rundeda for two years and transferred to Kotra within same district vide order (Ann.1), which is at a distance of 175 kms. Obviously whenever transfer orders are passed, it accommodates some other employee, which cannot be considered to be malice or arbitrary exercise of powers of the authority. Looking to the fact that when petitioner, himself, remained posted for two years at Rundeda and then shifted to a transferable post within same district and when he has no vested right to hold the post at the same station. I do not find any error in impugned judgment of the Tribunal.

Consequently, this writ petition fails and is hereby dismissed alongwith stay petition No.4291/05.

(Ajay Rastogi), J.

K.khatri/5416cwp2003.